

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1471

Introduced by Assembly Member Perea

February 27, 2015

An act to amend Sections 201, 1155, 2601, ~~and 15911.06, 16906, 17701.09, 17702.03, 17707.08, and 17710.06~~ of the Corporations Code, relating to ~~corporations~~: *business*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1471, as amended, Perea. ~~Business entity name reservations.~~
Business entities: filings.

(1) ~~Existing law, the~~ *The General Corporations Corporation Law*, the Social Purpose Corporations Act, and the California Revised Uniform Limited Liability Company Act, authorize the Secretary of State, upon payment of a fee by the applicant, to issue a certificate of reservation of any name, not otherwise prohibited.

The bill would make a nonsubstantive change to the cross-reference of the requirement to pay a fee by the applicant in these laws.

(2) The General Corporation Law and the Social Purpose Corporations Act limits the Secretary of State from issuing a certificate reserving any name that is likely to mislead the public or the same name for 2 or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm, corporation, or social purpose corporation, as applicable.

This bill would specify that the Secretary of State may reserve that name to the use or benefit of a person, as provided.

(3) The Social Purpose Corporations Act does not prohibit the Secretary of State from filing articles for a social purpose corporation subject to the Banking Law setting forth a name in which “bank,” “trust,” “trustee,” or related words appear, if the articles are endorsed with the approval of the Commissioner of Financial Institutions. Existing law reorganized the Department of Financial Institutions and the Commissioner of Financial Institutions into the Department of Business Oversight headed by a Commissioner of Business Oversight.

This bill would add another basis under which the Secretary of State is not prohibited from filing articles for a social purpose corporation subject to the Banking Law setting forth a name in which “bank,” “trust,” “trustee,” or related words appear, and would change the name of the Commissioner of Financial Institutions to the Commissioner of Business Oversight.

(4) The General Corporation Law, the Uniform Limited Partnership Act of 2008, and the Uniform Partnership Act of 1994 authorize a business entity formed under its respective provisions to be converted into another business entity under certain conditions, including, among others, that the execution of a statement or certificate of conversion set forth a name and street address, as specified.

This bill would specify that the statement or certificate of conversion set forth the name, mailing address, and street address of the converted entity’s agent for service of process.

(5) The California Revised Uniform Limited Liability Company Act requires a record delivered to the Secretary of State for filing under its provisions to be signed by particular individuals, as specified. The act specifically requires the person who filed a certificate of dissolution to sign a certificate of cancellation of the article of organization upon the completion of the winding up of affairs of the limited liability company, except as specified.

This bill would revise the general provisions relating to the particular individual required to sign a record, and instead require the managers to sign a certificate of cancellation of the article of organization upon the completion of the winding up of affairs of the limited liability company, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 201 of the Corporations Code is amended
2 to read:

3 201. (a) The Secretary of State shall not file articles setting
4 forth a name in which “bank,” “trust,” “trustee,” or related words
5 appear, unless the certificate of approval of the Commissioner of
6 Business Oversight is attached thereto. This subdivision does not
7 apply to the articles of any corporation subject to the Banking Law
8 on which is endorsed the approval of the Commissioner of Business
9 Oversight.

10 (b) The Secretary of State shall not file articles which set forth
11 a name which is likely to mislead the public or which is the same
12 as, or resembles so closely as to tend to deceive, the name of a
13 domestic corporation, the name of a foreign corporation which is
14 authorized to transact intrastate business or has registered its name
15 pursuant to Section 2101, a name which a foreign corporation has
16 assumed under subdivision (b) of Section 2106, a name which will
17 become the record name of a domestic or foreign corporation upon
18 the effective date of a filed corporate instrument where there is a
19 delayed effective date pursuant to subdivision (c) of Section 110
20 or subdivision (c) of Section 5008, or a name which is under
21 reservation for another corporation pursuant to this title, except
22 that a corporation may adopt a name that is substantially the same
23 as an existing domestic corporation or foreign corporation which
24 is authorized to transact intrastate business or has registered its
25 name pursuant to Section 2101, upon proof of consent by such
26 domestic or foreign corporation and a finding by the Secretary of
27 State that under the circumstances the public is not likely to be
28 misled.

29 (c) The use by a corporation of a name in violation of this
30 section may be enjoined notwithstanding the filing of its articles
31 by the Secretary of State.

32 (d) Any applicant may, upon payment of the fee prescribed
33 therefor in Article 3 (commencing with Section 12180) of Chapter
34 3 of Part 2 of Division 3 of Title 2 of the Government Code, obtain
35 from the Secretary of State a certificate of reservation of any name
36 not prohibited by subdivision (b), and upon the issuance of the
37 certificate the name stated therein shall be reserved for a period
38 of 60 days. The Secretary of State shall not, however, issue

1 certificates reserving the same name for two or more consecutive
2 60-day periods to the same applicant or for the use or benefit of
3 the same person; nor shall consecutive reservations be made by
4 or for the use or benefit of the same person; of names so similar
5 as to fall within the prohibitions of subdivision (b).

6 *SEC. 2. Section 1155 of the Corporations Code is amended to*
7 *read:*

8 1155. (a) To convert a corporation:

9 (1) If the corporation is converting into a domestic limited
10 partnership, a statement of conversion shall be completed on the
11 certificate of limited partnership for the converted entity.

12 (2) If the corporation is converting into a domestic partnership,
13 a statement of conversion shall be completed on the statement of
14 partnership authority for the converted entity, or if no statement
15 of partnership authority is filed then a certificate of conversion
16 shall be filed separately.

17 (3) If the corporation is converting into a domestic limited
18 liability company, a statement of conversion shall be completed
19 on the articles of organization for the converted entity.

20 (b) Any statement or certificate of conversion of a converting
21 corporation shall be executed and acknowledged by those officers
22 of the converting corporation as would be required to sign an
23 officers' certificate (Section 173), and shall set forth all of the
24 following:

25 (1) The name of the converting corporation and the Secretary
26 of State's file number of the converting corporation.

27 (2) A statement of the total number of outstanding shares of
28 each class entitled to vote on the conversion, that the principal
29 terms of the plan of conversion were approved by a vote of the
30 number of shares of each class which equaled or exceeded the vote
31 required under Section 1152, specifying each class entitled to vote
32 and the percentage vote required of each class.

33 (3) The name, form, and jurisdiction of organization of the
34 converted entity.

35 (4) The ~~name~~ *name, mailing address*, and street address of the
36 ~~corporation's converted entity's~~ agent for service of process. If a
37 corporation qualified under Section 1505 is designated, no address
38 for it shall be set forth.

39 (c) For the purposes of this chapter, the certificate of conversion
40 shall be on a form prescribed by the Secretary of State.

1 (d) The filing with the Secretary of State of a statement of
2 conversion on an organizational document or a certificate of
3 conversion as set forth in subdivision (a) shall have the effect of
4 the filing of a certificate of dissolution by the converting
5 corporation and no converting corporation that has made the filing
6 is required to file a certificate of election under Section 1901 or a
7 certificate of dissolution under Section 1905 as a result of that
8 conversion.

9 (e) Upon the effectiveness of a conversion pursuant to this
10 chapter, a converted entity that is a domestic partnership, domestic
11 limited partnership, or domestic limited liability company shall
12 be deemed to have assumed the liability of the converting
13 corporation (1) to prepare and file or cause to be prepared and filed
14 all tax and information returns otherwise required of the converting
15 corporation under the Corporation Tax Law (Part 11 (commencing
16 with Section 23001) of Division 2 of the Revenue and Taxation
17 Code) and (2) to pay any tax liability determined to be due pursuant
18 to that law.

19 ~~SEC. 2.~~

20 *SEC. 3.* Section 2601 of the Corporations Code is amended to
21 read:

22 2601. (a) The Secretary of State shall not file articles setting
23 forth a name in which “bank,” “trust,” “trustee,” or related words
24 appear, unless the certificate of approval of the Commissioner of
25 Business Oversight is attached to the articles. This subdivision
26 does not apply to the articles of any social purpose corporation
27 subject to the Banking Law on which is endorsed the approval of
28 the Commissioner of Business Oversight or to which a certificate
29 of approval of the Commissioner of Business Oversight is attached
30 to the articles.

31 (b) (1) The Secretary of State shall not file articles that set forth
32 a name that is likely to mislead the public or that is the same as,
33 or resembles so closely as to tend to deceive, the name of a
34 domestic corporation, the name of a domestic social purpose
35 corporation, or the name of a foreign corporation that is authorized
36 to transact intrastate business or has registered its name pursuant
37 to Section 2101, a name that a foreign corporation has assumed
38 under subdivision (b) of Section 2106, a name that will become
39 the record name of a corporation or social purpose corporation or
40 a foreign corporation upon the effective date of a filed corporate

1 instrument where there is a delayed effective date pursuant to
2 subdivision (c) of Section 110 or subdivision (c) of Section 5008,
3 or a name that is under reservation for another corporation or social
4 purpose corporation pursuant to this title, except that a social
5 purpose corporation may adopt a name that is substantially the
6 same as an existing corporation or social purpose corporation,
7 foreign or domestic, which is authorized to transact intrastate
8 business or has registered its name pursuant to Section 2101, upon
9 proof of consent by the domestic or foreign corporation or social
10 purpose corporation and a finding by the Secretary of State that
11 under the circumstances the public is not likely to be misled. The
12 use by a social purpose corporation of a name in violation of this
13 section may be enjoined notwithstanding the filing of its articles
14 by the Secretary of State.

15 (2) A corporation formed pursuant to this division before
16 January 1, 2015, may elect to change its status from a flexible
17 purpose corporation to a social purpose corporation by amending
18 its articles of incorporation to change its name to replace “flexible
19 purpose corporation” with “social purpose corporation” and to
20 replace the term “flexible purpose corporation” with “social
21 purpose corporation” as applicable in any statements contained in
22 the articles. For any flexible purpose corporation formed prior to
23 January 1, 2015, that has not amended its articles of incorporation
24 to change its status to a social purpose corporation, any reference
25 in this division to social purpose corporation shall be deemed a
26 reference to “flexible purpose corporation.”

27 (c) Any applicant may, upon payment of the fee prescribed in
28 Article 3 (commencing with Section 12180) of Chapter 3 of Part
29 2 of Division 3 of Title 2 of the Government Code, obtain from
30 the Secretary of State a certificate of reservation of any name not
31 prohibited by subdivision (b), and upon the issuance of the
32 certificate the name stated in the certificate shall be reserved for
33 a period of 60 days. The Secretary of State shall not, however,
34 issue certificates reserving the same name for two or more
35 consecutive 60-day periods to the same applicant or for the use or
36 benefit of the same person. No consecutive reservations shall be
37 made by or for the use or benefit of the same person of names so
38 similar as to fall within the prohibitions of subdivision (b).

39 *SEC. 4. Section 15911.06 of the Corporations Code is amended*
40 *to read:*

1 15911.06. (a) Upon conversion of a limited partnership, one
2 of the following applies:

3 (1) If the limited partnership is converting into a domestic
4 limited liability company, a statement of conversion shall be
5 completed on the articles of organization for the converted entity
6 and shall be filed with the Secretary of State.

7 (2) If the limited partnership is converting into a domestic
8 partnership, a statement of conversion shall be completed on the
9 statement of partnership authority for the converted entity. If no
10 statement of partnership authority is filed, a certificate of
11 conversion shall be filed separately with the Secretary of State.

12 (3) If the limited partnership is converting into a domestic
13 corporation, a statement of conversion shall be completed on the
14 articles of incorporation for the converted entity and shall be filed
15 with the Secretary of State.

16 (4) If the limited partnership is converting to a foreign limited
17 partnership or foreign other business entity, a certificate of
18 conversion shall be filed with the Secretary of State.

19 (b) Any certificate or statement of conversion shall be executed
20 and acknowledged by all general partners and shall set forth all of
21 the following:

22 (1) The name of the converting limited partnership and the
23 Secretary of State's file number of the converting limited
24 partnership.

25 (2) A statement that the principal terms of the plan of conversion
26 were approved by a vote of the partners, that equaled or exceeded
27 the vote required under Section 15911.03, specifying each class
28 entitled to vote and the percentage vote required of each class.

29 (3) The form of organization of the converted entity.

30 (4) The *name, mailing address, and* street address of the
31 converted entity's agent for service of process and the mailing
32 address of the chief executive office of the converted entity. If a
33 corporation that has complied with Section 1505 is designated as
34 the agent, no address for it shall be set forth.

35 (c) The filing with the Secretary of State of a certificate of
36 conversion or a statement of partnership authority, articles of
37 organization, or articles of incorporation containing a statement
38 of conversion as set forth in subdivision (a) shall have the effect
39 of the filing of a certificate of cancellation by the converting limited
40 partnership, and no converting limited partnership that has made

1 the filing is required to file a certificate of cancellation under
2 Section 15902.03 as a result of that conversion.

3 *SEC. 5. Section 16906 of the Corporations Code is amended*
4 *to read:*

5 16906. (a) If the converting partnership has filed a statement
6 of partnership authority under Section 16303 that is effective at
7 the time of the conversion, then upon conversion to a domestic
8 limited partnership, limited liability company, or corporation, the
9 certificate of limited partnership, articles of organization, or articles
10 of incorporation filed by the converted entity, as applicable, shall
11 contain a statement of conversion, in that form as may be
12 prescribed by the Secretary of State. If the converting partnership
13 has not filed a statement of partnership authority under Section
14 16303 that is effective at the time of the conversion, upon
15 conversion to a domestic limited partnership, limited liability
16 company, or corporation, the converted entity may, but is not
17 required to file, on its certificate of limited partnership, articles of
18 organization, or articles of incorporation, a statement of conversion.
19 A statement of conversion shall set forth all of the following:

20 (1) The name of the converting partnership and the Secretary
21 of State's file number, if any, of the converting partnership.

22 (2) A statement that the principal terms of the plan of conversion
23 were approved by a vote of the partners, which equaled or exceeded
24 the vote required under Section 16903.

25 (3) ~~The name~~ *name, mailing address*, and street address of the
26 ~~partnership's converted entity's~~ agent for service of process. If a
27 corporation qualified under Section 1505 is designated, no address
28 for it shall be set forth.

29 (b) A partnership converting to a foreign other business entity
30 that has filed a statement of partnership authority under Section
31 16303 that is effective at the time of conversion may file a
32 certificate of conversion with the Secretary of State. The certificate
33 of conversion shall contain the following:

34 (1) The names of the converting partnership and the converted
35 entity.

36 (2) The street address of the converted entity's chief executive
37 office and of an office in this state, if any.

38 (3) The form of organization of the converted entity.

39 (4) ~~The name, mailing address, and street address, and mailing~~
40 ~~address of the partnership's converted entity's~~ agent for service of

1 process. If a corporation qualified under Section 1505 is designated
2 as the agent, no address for it shall be set forth.

3 (c) The filing with the Secretary of State of a certificate of
4 limited partnership, articles of organization, or articles of
5 incorporation containing a statement of conversion as set forth in
6 subdivision (a) or a certificate of conversion filed pursuant to
7 subdivision (b) shall have the effect of the filing of a cancellation
8 by the converting partnership of any statement of partnership
9 authority filed by it.

10 ~~SEC. 3.~~

11 *SEC. 6.* Section 17701.09 of the Corporations Code is amended
12 to read:

13 17701.09. (a) Upon payment of the fee prescribed in Article
14 3 (commencing with Section 12180) of Chapter 3 of Part 2 of
15 Division 3 of Title 2 of the Government Code, a person may apply
16 to reserve the exclusive use of the name of a limited liability
17 company or foreign limited liability company, including an
18 alternative name for a foreign limited liability company whose
19 name is not available. If the Secretary of State finds that the name
20 applied for is available, it shall reserve the name for the applicant's
21 exclusive use for up to 60 days and issue a certificate of reservation.
22 The Secretary of State shall not issue certificates reserving the
23 same name for two or more consecutive 60-day periods to the same
24 applicant or for the use or benefit of the same person; nor shall
25 consecutive reservations be made by or for the use or benefit of
26 the same person for a name so similar as to fall within the
27 prohibitions of subdivision (b) of Section 17701.08.

28 (b) The owner of a name reserved for a limited liability company
29 or foreign limited liability company may transfer the reservation
30 to another person by delivering to the Secretary of State a signed
31 notice of the transfer which states the reserved name and the name
32 and address of the transferee.

33 *SEC. 7.* Section 17702.03 of the Corporations Code is amended
34 to read:

35 17702.03. (a) A record delivered to the Secretary of State for
36 filing pursuant to this title shall be signed as follows:

37 (1) Except as otherwise *expressly* provided in *this title and in*
38 ~~paragraphs (2) and (3), this subdivision~~, a record signed on behalf
39 of a limited liability company shall be signed by a person
40 authorized by the limited liability company.

1 (2) A limited liability company's initial articles of organization
2 shall be signed by at least one person acting as an organizer.

3 (3) A record filed on behalf of a dissolved limited liability
4 company that has no members shall be signed by the person
5 winding up the limited liability company's activities or a person
6 appointed under Section 17707.04 to wind up those activities.

7 (4) A certificate of cancellation under Section 17707.02 shall
8 be signed by each organizer that signed the initial articles of
9 organization, but a personal representative of a deceased or
10 incompetent organizer may sign in the place of the decedent or
11 incompetent.

12 (5) A certificate of cancellation under Section 17707.08 shall
13 be signed by a majority of managers unless the event causing the
14 dissolution that is specified in subdivision (c) of Section 17707.01
15 occurs, in which case the certificate of cancellation shall be signed
16 as provided in paragraph (3). *in accordance with paragraph (1)*
17 *of subdivision (b) of Section 17707.08.*

18 (6) A certificate of correction shall be executed in the same
19 manner in which the record being corrected was required to be
20 executed.

21 (b) ~~Any~~ *Except as otherwise expressly provided in this title and*
22 *in subdivision (a), any record filed under this title may be signed*
23 *by an agent.*

24 (c) A limited liability company may record in the office of the
25 county recorder of any county in this state, and county recorders,
26 on request, shall record a certified copy of the limited liability
27 company articles of organization and any exhibit or attachment,
28 or any amendment or correction thereto, that has been filed in the
29 office of the Secretary of State. A foreign limited liability company
30 may record in the office of the county recorder of any county in
31 the state a certified copy of the application for registration of the
32 foreign limited liability company, or any amendment thereto, that
33 has been filed in the office of the Secretary of State. The recording
34 shall create a conclusive presumption in favor of any bona fide
35 purchaser or encumbrancer for value of the limited liability
36 company real property located in the county in which the certified
37 copy has been recorded, of the statements contained therein.

38 (d) If the Secretary of State determines that an instrument
39 submitted for filing or otherwise submitted does not conform to
40 the law and returns it to the person submitting it, the instrument

may be resubmitted accompanied by a written opinion of a member of the State Bar of California submitting the instrument or representing the person submitting it, to the effect that the specific provisions of the instrument objected to by the Secretary of State do conform to law and stating the points and authorities upon which the opinion is based. The Secretary of State shall rely, with respect to any disputed point of law, other than the application of Sections 17701.08, 17701.09, 17708.02, and 17708.03, upon that written opinion in determining whether the instrument conforms to law. The date of filing in that case shall be the date the instrument is received on resubmission.

SEC. 8. Section 17707.08 of the Corporations Code is amended to read:

17707.08. (a) (1) The managers shall sign and cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Article 7 (commencing with Section 17707.01), unless the event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in which case the persons conducting the winding up of the limited liability company's affairs pursuant to Section 17707.04 shall have the obligation to sign and cause to be filed the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) Any other information the persons filing the certificate of dissolution determine to include.

(C) The event listed in Section 17707.01 causing dissolution.

(3) If a dissolution pursuant to subdivision (b) of Section 17707.01 is made by the vote of all of the members and a statement to that effect is added to the certificate of cancellation of articles of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

~~(b) (1) The persons who filed the certificate of dissolution~~ The managers shall sign and cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant

1 to Section 17707.06, unless the event causing the dissolution is
2 that specified in subdivision (c) of Section 17707.01, in that case
3 the persons conducting the winding up of the limited liability
4 company's affairs pursuant to Section 17707.04 shall have the
5 obligation to sign and cause to be filed the certificate of
6 cancellation of articles of organization.

7 (2) The certificate of cancellation of articles of organization
8 shall set forth all of the following:

9 (A) The name of the limited liability company and the Secretary
10 of State's file number.

11 (B) That a final franchise tax return, as described by Section
12 23332 of the Revenue and Taxation Code, or a final annual tax
13 return, as described by Section 17947 of the Revenue and Taxation
14 Code, has been or will be filed with the Franchise Tax Board, as
15 required under Part 10.2 (commencing with Section 18401) of
16 Division 2 of the Revenue and Taxation Code.

17 (C) That upon the filing of the certificate of cancellation, the
18 limited liability company shall be canceled and its powers, rights,
19 and privileges shall cease.

20 (D) Any other information the persons filing the certificate of
21 cancellation of articles of organization determine to include.

22 (3) The Secretary of State shall notify the Franchise Tax Board
23 of the filing.

24 (c) Upon filing a certificate of cancellation pursuant to
25 subdivision (b), a limited liability company shall be canceled and
26 its powers, rights, and privileges shall cease.

27 *SEC. 9. Section 17710.06 of the Corporations Code is amended*
28 *to read:*

29 17710.06. (a) Upon conversion of a limited liability company,
30 one of the following applies:

31 (1) If the limited liability company is converting into a domestic
32 limited partnership, a statement of conversion shall be completed
33 on a certificate of limited partnership for the converted entity and
34 shall be filed with the Secretary of State.

35 (2) If the limited liability company is converting into a domestic
36 partnership, a statement of conversion shall be completed on the
37 statement of partnership authority for the converted entity. If no
38 statement of partnership authority is filed, a certificate of
39 conversion shall be filed separately with the Secretary of State.

1 (3) If the limited liability company is converting into a domestic
2 corporation, a statement of conversion shall be completed on the
3 articles of incorporation for the converted entity and shall be filed
4 with the Secretary of State.

5 (4) If the limited liability company is converting to a foreign
6 limited liability company or foreign other business entity, a
7 certificate of conversion shall be filed with the Secretary of State.

8 (b) Any certificate or statement of conversion shall be executed
9 and acknowledged by all members, unless a lesser number is
10 provided in the articles of organization or operating agreement,
11 and shall set forth all of the following:

12 (1) The name of the converting limited liability company and
13 the Secretary of State's file number of the converting limited
14 liability company.

15 (2) A statement that the principal terms of the plan of conversion
16 were approved by a vote of the members, that equaled or exceeded
17 the vote required under Section 17710.03, specifying each class
18 entitled to vote and the percentage vote required of each class.

19 (c) A certificate of conversion shall set forth all of the following:

20 (1) The name, form, and jurisdiction of organization of the
21 converted entity.

22 (2) The name, ~~street~~, *street address*, and mailing address of the
23 converted entity's agent for service of process. *If a corporation*
24 *qualified under Section 1505 is designated as the agent, no address*
25 *for it shall be set forth.*

26 (3) The street address of the converted entity's chief executive
27 office.

28 (d) The filing with the Secretary of State of a certificate of
29 conversion, a certificate of limited partnership, a statement of
30 partnership authority, or articles of incorporation containing a
31 statement of conversion as set forth in subdivision (a) shall have
32 the effect of the filing of a certificate of cancellation by the
33 converting limited liability company, and no converting limited
34 liability company that has made the filing is required to take any
35 action under Article 7 (commencing with Section 17707.01) as a
36 result of that conversion.

37 (e) For the purposes of this title, the certificate of conversion
38 shall be on a form prescribed by the Secretary of State.

O